

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 No. 1:04-cr-10231-MLW-1

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UNITED STATES OF AMERICA

6

7

vs.

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PETER V. MAGGIO, III, et al

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For Hearing Before:
Chief Judge Mark L. Wolf

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Sentencing Hearing, Day III

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United States District Court
District of Massachusetts (Boston.)
One Courthouse Way
Boston, Massachusetts 02210
Monday, November 20, 2006

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REPORTER: RICHARD H. ROMANOW, RPR

23 Official Court Reporter
United States District Court
24 One Courthouse Way, Room 5200, Boston, MA 02210
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25 (Continued.)

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1 PROCEEDINGS

2 (Begins, 3:00 p.m.)

3 THE CLERK: Criminal 04-10231, the United

4 States versus Peter Maggio, et al. The Court is in

5 session. You may be seated.

6 THE COURT: Good afternoon. Would counsel

7 please identify themselves for the record.

8 MR. WILD: Good afternoon, your Honor. Victor

9 A. Wild for the Government. And with leave from the

10 Court, may I continue to have Special Agent Scott

11 Robbins at counsel table?

12 THE COURT: Yes.

13 MR. WILD: Thank you.

14 MR. WHITE: Good afternoon, your Honor.

15 William White on behalf of Mr. Sacco.

16 MR. MERBERG: Good afternoon. James Merberg

17 on behalf of Peter Maggio.

18 MR. LOPEZ: Good afternoon, your Honor. Scott

19 Lopez on behalf of Louis Paradiso.

20 MR. WEINSTEIN: Good afternoon, your Honor.

21 Elliot Weinstein representing William Howe.

22 MR. OTERI: Good afternoon, your Honor.

23 Joseph Oteri for Mr. O'Neill.

24 MR. WITKIN: Good afternoon, your Honor.

25 Roger Witkin on behalf of Mr. Havey.

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1 THE COURT: Okay. Each of the defendants is
2 present.

3 Since we suspended, 5:00 on Friday, I've given a
4 great deal of thought to the matters presented. I'm
5 going to proceed as follows. I'm going to announce the
6 sentence that I'm imposing on each defendant -- and I'll
7 go through all six of them before I explain my reasons
8 in order to alleviate any avoidable suspense, and then
9 I'll go back and explain individually the reasons for

10 each of the sentences. I'll tell the six defendants now
11 that they each have a right to appeal my sentence within
12 10 days of entry of judgment. If you would like to do
13 so but can't afford a lawyer, a lawyer will be appointed
14 to represent you at public expense.

15 In essence, I followed the process prescribed by
16 the First Circuit in Jimenez Beltray. As you know, I've
17 spent good parts of three days calculating the guideline
18 ranges for each defendant and I've given the guidelines
19 appropriate weight. I've then decided whether a
20 traditional departure is justified. Finally, I've
21 considered the Section 3553(a) factors in the direction
22 that the sentence be sufficient but no more than
23 necessary to comply with the Section 3553(a) purposes of
24 sentencing. Ultimately I'm imposing a sentence that I
25 find to be most reasonable.

6

1 Each of the defendants should stand.

2 Well, actually before we do that, with regard to
3 Mr. Maggio, I've decided that no departure or variance
4 under the Section 3553(a) factors is justified. I fully
5 recognize that Mr. Maggio has energetically attempted to
6 cooperate with the government in several

7 investigations. No 5(k) motion has been filed in part
8 because he committed other crimes while cooperating,
9 including, I believe, the crimes in this case while he
10 was cooperating in the Cerino case that was before me.
11 I also fully accept that Mr. Maggio is bipolar and that
12 that may have influenced in some way his conduct,
13 although I note that many people are bipolar and they
14 don't repetitively engage in massive frauds. And I
15 appreciate and regret that there are poignant family
16 circumstances here, that Mrs. Maggio has cancer which
17 may prove to be fatal and that Mr. Maggio's daughters
18 are suffering severe emotional distress. This
19 combination of factors in some cases would justify a
20 downward departure or variance. However, under Section
21 5(k)2.0 of the guidelines, which quotes Section 3553(b)
22 of the statute, "A judge may depart only if
23 extraordinary circumstances should result in a sentence
24 different from that prescribed by the guidelines." I
25 believe that, generally speaking, this same concept

1 applies to Booker variances.

2 In this case, Mr. Maggio was the mastermind and
3 the engine of a widespread scheme that defrauded various

4 institutions of more than 15 million dollars. As part
5 of that, he drew in some naive, vulnerable co-defendants
6 who never would have committed a Federal crime, let
7 alone a massive fraud -- and I don't mean all of his
8 co-defendants, but particularly with regard to
9 Mr. Paradiso, Mr. Sacco and Mr. Havey, people who have
10 ended up in Federal court after about five or six years
11 of anxiety with their lives substantially injured, if
12 not ruined. So in view of the seriousness of the
13 offense, the effect on others, and the need to serve the
14 purposes I'll describe when I get to the reasons for the
15 particular sentence, the motion for downward departure
16 is denied.

17 Mr. Maggio, please stand.

18 (Mr. Maggio stands.)

19 THE COURT: For reasons that I will describe
20 after I've announced the sentence for your
21 co-defendants, I hereby sentence you to serve 98 months
22 in the custody of the Attorney General of the United
23 States, to be followed by 36 months of supervised
24 release. I'm not imposing a fine because I find you
25 cannot pay a fine, even in installments. In part,

1 because I'm ordering you to pay \$15,731,860 as
2 restitution and there's an \$1100 mandatory special
3 assessment.

4 The restitution shall be paid in the amounts of
5 \$8,552,393 to New Holland Credit, \$4,963,832 to CIT
6 Group, or National Union on its behalf, \$901,129 to
7 General Electric Capital, \$476,000 to Volvo Commercial,
8 \$118,000 to Orix Credit Alliance, \$72,479 to Greentree
9 Financial, \$305,376 to O'Connor GMC, \$266,307 to U.S.
10 Bank Corp., \$6,081 to Eastern Bank Financial, and
11 \$69,817 to Caterpillar Financial Services.

12 Your supervised release will be on the standard
13 conditions and on the additional conditions that you not
14 possess a firearm or other dangerous weapon. That you
15 pay the restitution according to a repayment schedule
16 that I will order. You may not incur any new charges or
17 open any additional lines of credit without the approval
18 of the Probation Officer. You must provide the
19 Probation Officer access to any requested financial
20 information and that information may be shared with the
21 Financial Litigation Unit of the U.S. Attorney's
22 office. In addition, you shall participate in a mental
23 health treatment program as directed by the Probation

24 Office and contribute to the costs of that treatment to
25 the extent you have ability to pay or insurance.

9

1 You may be seated for the moment.

2 MR. MAGGIO: Thank you.

3 (Mr. Maggio is seated.)

4 THE COURT: Mr. Howe, please stand.

5 (Mr. Howe stands.)

6 THE COURT: For the reasons that I'll describe
7 after I impose sentence on your co-defendants, I hereby
8 sentence you to serve 21 months in the custody of the
9 Attorney General of the United States to be followed by
10 36 months supervised release. I'm not imposing a fine
11 because I find you cannot pay a fine, even in
12 installments.

13 I am, however, ordering you to pay restitution in
14 the amount of \$4,282,200, and, in addition, there's an
15 \$800 special assessment.

16 With regard to your supervised release, it, too,
17 is on the standard conditions and on the additional
18 conditions that you not possess a firearm or any
19 dangerous weapon, that you pay the restitution to the
20 parties and on a schedule that I will order. You, too,

21 may not incur any new credit charges or open any
22 additional lines of credit without the approval of the
23 Probation Officer. You should provide the Probation
24 Officer access to any request of financial information,
25 and that information may be shared with the Financial

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1 Litigation Unit of the U.S. Attorney's office.

2 And, in fact, those are conditions that are being
3 imposed on all six of the defendants today. I won't
4 repeat them each time. You may be seated.

5 (Mr. Howe is seated.)

6 THE COURT: Mr. O'Neill, please stand.

7 (Mr. O'Neill stands.)

8 THE COURT: For reasons that I will describe,
9 I hereby sentence you also to serve 21 months in the
10 custody of the Attorney General of the United States, to
11 be followed by 36 months of supervised release.

12 You shall pay restitution in the amount of
13 \$1,813,820 to the National Union Fire Insurance Company
14 on behalf of CIT. Your duty to pay restitution begins
15 immediately and will continue during your supervised
16 release. You are also ordered to pay a fine of \$7,500
17 after the restitution is paid. In addition, there's a

18 \$400 mandatory special assessment.

19 And as I said, the special conditions are as I
20 described them a moment ago for Mr. Howe. And if I
21 haven't mentioned it, there's also a \$400 special
22 assessment.

23 Mr. O'Neill, you may be seated for now.

24 (Mr. O'Neill is seated.)

25 THE COURT: Mr. Paradiso, please stand.

11

1 (Mr. Paradiso stands.)

2 THE COURT: Mr. Paradiso, I hereby sentence
3 you to serve 12 months and 1 day in the custody of the
4 Attorney General of the United States, to be followed by
5 36 months of supervised release on the conditions I
6 described earlier. I'm not imposing a fine, because I
7 find you cannot pay a fine, even in installments.

8 I am, however, ordering you to pay restitution of
9 \$1,792,849 and a \$500 special assessment.

10 The conditions of your supervised release are as I
11 described earlier.

12 In addition, all of the defendants are being
13 ordered to give DNA samples.

14 You may be seated for now.

15 (Mr. Paradiso is seated.)

16 THE COURT: Mr. Sacco, please stand.

17 (Mr. Sacco stands.)

18 THE COURT: Mr. Sacco, I hereby sentence you

19 to serve 24 months probation. I'm not imposing a fine

20 because I find you cannot pay a fine, even in

21 installments.

22 There is, however, \$420,878 in restitution and a

23 \$200 special assessment.

24 And your special conditions are as I described

25 earlier concerning Mr. Howe.

12

1 You may be seated for now.

2 (Mr. Sacco is seated.)

3 THE COURT: Mr. Havey, please stand.

4 (Mr. Havey stands.)

5 THE COURT: I've been advised by Probation

6 earlier today that if a 15 month sentence was imposed,

7 the Bureau of Prisons would order your release on

8 December 12, 2006. So I hereby sentence you to serve 15

9 months or the equivalent of 15 months in the custody of

10 the Attorney General, but I'm ordering that you be

11 released -- well, perhaps I should put it this way. I'm

12 ordering that you continue to be in the custody of the
13 Attorney General until December 12, 2006, at which time
14 you'll be released. That's the equivalent of a 15 month
15 sentence. I've been informed that the Bureau of Prisons
16 would not designate Mr. Havey and they would inform the
17 Marshal service to hold him until December 12, when he'd
18 be released from Plymouth. So he got a 15 month
19 sentence, but this will eliminate the risks of confusion
20 and some additional work.

21 There's 36 months of supervised release on the
22 conditions that I've described for Mr. Howe and, in
23 addition, you shall participate in a program for
24 substance abuse counseling, as directed by the United
25 States Probation Office, which program may include

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1 testing up to 104 times a year, to determine whether
2 you've used alcohol or drugs. You shall pay for the
3 cost of those testing and treatment services to the
4 extent you have the ability to pay or insurance.

5 You may be seated.

6 (Mr. Havey is seated.)

7 MR. WILD: Your Honor, the Court did not
8 announce either restitution or a special assessment.

9 THE COURT: Thank you. For Mr. Havey?

10 MR. WILD: Yes, for Mr. Havey.

11 THE COURT: I'm sorry.

12 (Mr. Havey stands, again.)

13 THE COURT: With regard to restitution,

14 Mr. Havey shall pay \$437,104 and a \$300 special

15 assessment. I'm not imposing a fine because I find he

16 cannot pay a fine, even in installments.

17 Mr. Maggio, please stand. Mr. Havey, you may be

18 seated.

19 (Mr. Havey is seated.)

20 (Mr. Maggio stands.)

21 THE COURT: I've imposed a 98 month sentence

22 on you. That is within the guideline range. It is,

23 however, longer than the low end sentence the government

24 recommended. But the reason for that is that while

25 there are competing considerations in your case,

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1 including the considerations that, as I've said, might,

2 in other circumstances, have justified a departure or a

3 variance, someone deserves more than the low end

4 sentence when there's a range that's found to be usually

5 reasonable, and even with the other things you have

6 going for you, you deserve more than a low end sentence.

7 You've committed a very serious offense. Your
8 motive was greed. You've committed this offense after
9 you've been caught committing other offenses, or you
10 continued to commit this offense after you've been
11 caught committing other offenses. You may have been
12 bipolar, I accept that you were, but you weren't
13 incompetent. And, in fact, you demonstrated a real
14 capacity to operate. And as a result, there were real
15 victims.

16 There are institutions who aren't likely to get
17 their 15 million dollars back, certainly not from you,
18 and you've got co-defendants, like Mr. Sacco and
19 Mr. Paradiso and Mr. Havey, particularly, who you've
20 lured into this scheme. You told them that, in a worst
21 case scenario, if your fraudulent business didn't work
22 out -- although you didn't explain to them it was
23 fraudulent at the outset, but if your fraudulent
24 business didn't work out, they'd just have to declare
25 bankruptcy.

15

1 They've had a miserable five or six years. For
2 some reason it took the government until 2004 to indict

3 this case. They've had this hanging over them. It
4 severely injured if not ruined their lives. And
5 frankly, I don't have confidence that you've got the
6 message. This is, I think, the fourth time that you've
7 been sentenced by somebody.

8 I find that 98 months is the most appropriate
9 sentence in view of all of the Section 3553(a) factors.
10 I'm not going to recite all of them with regard to each
11 defendant, although I've spent hours since Friday
12 thinking about them and many hours before that thinking
13 about them. However, with regard to Mr. Maggio, a
14 sentence of 98 months is necessary to reflect the
15 seriousness of the crime you've committed, the
16 devastation that you've inflicted. It's necessary to
17 try again to send you a message. When you get out, as
18 I've said, since you showed uncommon resistance to
19 getting the message earlier, committing crimes while you
20 were cooperating with the government, I think a serious
21 sentence is necessary to try again to deliver that
22 message to you.

23 It's also very important to serve the interest of
24 general deterrence, the importance of discouraging
25 others from engaging in similar conduct. You know,

1 white collar crimes, which are clearly not victimless
2 crimes, are crimes of calculation, and I hope that
3 anybody who hears about this sentence will realize it's
4 a miscalculation, or that other potential masterminds
5 will resist the temptation to use their talents to
6 defraud people of money because they hear that you got
7 98 months. And it's 98 months that's intended to run
8 after all your other sentences expire. It's not my
9 intention that it be concurrent with any time you've
10 gotten in any other case.

11 I considered Mr. Deveau's cooperation in sentence,
12 he got a year and a day, and he was a very serious and
13 significant player in this scheme. But you're the only
14 person in the scheme more culpable than Mr. Deveau. So
15 the fact that he cooperated and got a lower sentence is
16 not something that I find should benefit you.

17 You may be seated.

18 (Mr. Maggio is seated.)

19 MR. MERBERG: Your Honor, before we go to the
20 other matters -- and I don't know if you want me to do
21 this seriatim or not, but he's now serving time on --

22 THE COURT: I don't want to do this now. When

23 I finish, I'll see if there are other matters to be
24 addressed.

25 MR. MERBERG: All right, your Honor.

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1 THE COURT: Mr. Howe, please stand.

2 (Mr. Howe stands.)

3 THE COURT: I've imposed on you a 21 month
4 sentence. The guideline range for your sentence was 33
5 to 41 months and the government recommended a 33 month
6 sentence, while you were seeking a sentence of home
7 confinement. I've given you a 21 month sentence as a
8 departure based on your exceptional, and I would say,
9 extraordinary good works. This is a departure pursuant
10 to Section 5(h)(1.11) of the guidelines. It is not a
11 Section 3553(a) variance. Although I would vary, to
12 this extent, if it were necessary to do that. However,
13 despite those exceptional extraordinary good works, for
14 the reasons I'll explain, a substantial term of
15 imprisonment, rather than home confinement, is necessary
16 and appropriate in your case.

17 I recognize that good works is a discouraged
18 ground for a downward departure, but the First Circuit
19 recognized, most recently, perhaps in Thurston that a

20 departure for good works is permissible if they are
21 exceptional good works. That's Thurston, 358 F. 3rd 51
22 at 79. Moreover, even if a departure would not have
23 been justified before Booker for good works, good works
24 may justify a somewhat shorter sentence under the
25 reasonableness standard that now applies, as was

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1 explained in the later Thurston decision, I believe, at
2 Pages 319 to 320.

3 The First Circuit characterized Mr. Thurston as a
4 prominent, successful businessman who gave money. When
5 I got that case on remand, that's not the way I saw
6 Mr. Thurston, but that's a distinction that the First
7 Circuit made, the distinction between giving money, if
8 you have a lot of money, and devoting your time and
9 talents, if you don't. Mr. Howe was not a financially
10 successful businessman who gave money as many prominent
11 businessmen do, Mr. Howe repeatedly devoted his time to
12 people in need and did so to a truly exceptional
13 degree.

14 The Sixth Circuit in that Tocco case, T-O-C-C-O,
15 200 F. 3rd 401 at 434, you know, recognized the
16 distinction that I've often made myself and that I think

17 the First Circuit was implicitly making in Thurston.
18 They recognized that devoting time and talent may
19 justify a downward departure, where merely giving money
20 would not.

21 I don't think that I've ever encountered anybody
22 who's devoted so much of his time and talent to helping
23 others both on an organized, planned and spontaneous
24 basis. This is something that I realize you've done,
25 Mr. Howe, over 40 years. Those activities are

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1 summarized in Mr. Howe's sentencing memorandum, which is
2 Docket Number 149, and in the many letters on his
3 behalf, both of which I hereby adopt.

4 But to just touch on it, I mean, Mr. Howe has, as
5 part of the fabric of his life, you know, been helping
6 really needy people. He takes a blind lady shopping.
7 He has, on several occasions, served as a big brother.
8 He volunteers regularly at Children's Hospital and gives
9 an extraordinary amount of blood platelets, which are
10 vitally needed, and I fully accept, save lives. And
11 he's also been a good Samaritan. There were repeated
12 instances of his seeing women with automobiles broken
13 down on the highway, stopping to help them and, indeed,

14 turning around on the highway and finding them to help
15 them, and things that just reflect a generous
16 character.

17 I note that as soon as he was confronted by the
18 FBI in this case, Mr. Howe cooperated, he didn't go get
19 a lawyer, he didn't calculate how he should do it. It
20 turned out to be too late for him to get a motion based
21 on substantial assistance because Mr. Deveau had already
22 been well advised, after he knew he was caught by CIT,
23 to come in and cooperate. But the cooperation that you
24 gave at the outset of your interaction with the FBI is
25 part of your history and I've taken it into account.

20

1 These exceptional works justify a reasonable
2 downward departure, but nevertheless a significant term
3 of prison is still necessary. You have a prior
4 conviction for fraud. If I read the presentence report
5 right, you served a 6 month sentence. But that sentence
6 or that conviction, at least, was not adequate to deter
7 you from participating in this fraudulent scheme and
8 doing it repeatedly. You repeatedly prepared false
9 financial statements and tax returns that were essential
10 to the fraud. You couldn't have succeeded unless you

11 did that. So you made an indispensable contribution,
12 you played a serious role in the commission of a serious
13 crime.

14 A prison sentence is necessary to deter you and
15 others with similar accounting skills. I'm frankly
16 concerned that you haven't gotten the message even yet.
17 I recall your reluctance to plead guilty. I continued
18 the matter, scheduled your trial, and you were reluctant
19 to plead guilty -- and you had a right to a trial if you
20 wanted one, but the evidence was particularly powerful
21 concerning you. You don't -- you know, do you really
22 have trouble understanding --

23 MR. HOWE: No, I don't. I understand, your
24 Honor. In fact, you're absolutely right.

25 THE COURT: All right. And you know it's a

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1 crime to do what you did.

2 And, you know, a prison term is necessary to send
3 a message to you and to send a message so others and
4 it's also necessary to recognize the seriousness of the
5 offense. I mean, you, too, contributed. I don't think
6 I'd have Mr. Sacco and Mr. Paradiso or Mr. Havey here
7 unless somebody was willing to generate up these phony

8 documents and that was you.

9 I'm perplexed. And I recognize that you only got
10 \$13,000 from this scheme.

11 MR. HOWE: I did one a month, your Honor, did
12 one set of statements a month, your Honor.

13 THE COURT: Well, I understand that. This is
14 what I've -- look, I've wrestled with it and this is
15 where it comes out. You know, you got \$13,000 -- I've
16 considered all of this. You cooperated immediately when
17 you were confronted, you've done all these exceptional
18 good works, and, on the other hand, you know, this is
19 not the first time you've been in Federal court, being
20 sentenced by a Federal judge, and there are people out
21 millions and millions of dollars that they'll probably
22 never recover.

23 So it's just something -- well, you bring into
24 very sharp focus, you know, something I've seen over and
25 over, but rarely, if ever, as starkly as in you, that

1 somehow the very same people, you know, who love their
2 families, do wonderful things, also commit really
3 serious crimes. And I know that I've considered all
4 these things and imposed what I regard as the most

5 reasonable sentence in the circumstances. I recognize
6 and regret that you're not going to be able to give
7 platelets for several years and that may cost innocent
8 people their lives. Sentences often impose high costs
9 on innocent people, usually family members, and this is
10 another case where it has evidently occurred.

11 You may be seated.

12 (Mr. Howe is seated.)

13 THE COURT: Mr. O'Neill, please, stand.

14 (Mr. O'Neill stands.)

15 THE COURT: Your sentence represents a
16 variance under Section 3553. The government recommended
17 a sentence of 37 months, the low end of the guidelines.
18 Like Mr. Howe, you played an essential role in the
19 scheme, you were the gatekeeper to CIT, but there are
20 some extraordinary circumstances that make a lower
21 sentence reasonable and most appropriate in your
22 particular case.

23 One of the things the law requires me to consider
24 is the nature and circumstances of the offense. You did
25 not know of Deveau's fraudulent scheme with Mr. Maggio

1 at the inception of the fraudulent loan applications to

2 CIT. At that time you were already taking kickbacks on
3 legitimate loans, that is, kickbacks from Mr. Deveau,
4 and the way that was structured, evidently there was no
5 loss to CIT because you jacked up the loan rate to the
6 borrowers. When you realized that Mr. Deveau and
7 Mr. Maggio were committing a fraud, though, you
8 acquiesced in it, you joined the agreement. And I am
9 persuaded that your motive in doing that was to keep the
10 kickback scheme from being exposed. As I understand it,
11 you made \$61,000 from the kickback scheme -- well, maybe
12 \$60,000 from the kickback scheme, but nothing from the
13 fraud charged in this case, except perhaps the \$1,000
14 Mr. Maggio gave you when you came to Boston.

15 I've taken into account your history and
16 characteristics. I understand that you grew up in a
17 very poor family. That at a young age you started
18 taking financial responsibility for your parents and
19 your siblings by working hard. I've taken into account
20 that you've been exceptionally supportive of your
21 brother-in-law and sister-in-law when they've had
22 extraordinary problems and I recognize you're active in
23 the community, but these things alone would not be
24 enough, in my view. If we were sitting here several

25 years ago before courts were given more flexibility by

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1 this Booker decision, it would not be, alone, enough to
2 justify a downward departure for good works. They do,
3 however, definitely confer my sense that you don't need
4 to be deterred or rehabilitated. I'm satisfied that
5 you're generally and deeply ashamed and contrite and
6 that you're not going to commit any crimes like this
7 again.

8 You, also, I recognize, tried to cooperate. It
9 was too late. You and Mr. Deveau should have realized
10 it at about the same time, to be colloquial, that "The
11 jig was up," but he got into the government first. It's
12 somewhat unfair that Mr. Deveau gets a lesser sentence
13 than you, but not enough to cause me to reduce your
14 sentence further because of the sentence imposed on
15 him. That has not influenced my decision with regard to
16 you.

17 I'm giving you 21 months in prison. I think it's
18 a significant term in prison. It's necessary to
19 recognize the seriousness of the offense when somebody
20 in a position of responsibility in a financial
21 organization violates that responsibility, it's serious

22 and people need to be discouraged.

23 I'll tell you one thing that has influenced me and

24 that is that I've ordered you to pay restitution of

25 \$1,813,200. You only earned \$61,000 or maybe -- no more

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1 than \$61,000 from this scheme, but somehow, evidently

2 legitimately, you've earned enough money, you've saved

3 enough money to pay this restitution or a substantial

4 part of it, I expect. You're going to suffer a very

5 major financial penalty. As I've said -- and that's

6 part of the penalty here. It's real and it's part of

7 the penalty imposed to recognize the seriousness of the

8 offense. I expect that as people learn about this, it's

9 going to discourage them, it's going to deter them.

10 They're going to think, "Even if I make \$60,000, I may

11 end of owing or having to pay, really pay, almost \$2

12 million."

13 So I find that the degree of the departure, or

14 variance in this case, to be precise, is reasonable.

15 After Mr. Maggio and Mr. Deveau, you and Mr. Howe were

16 the most culpable, you played comparable roles, and I

17 have imposed the sentence that I think is most

18 reasonable in view of all the complex and competing

19 circumstances.

20 You may be seated.

21 (Mr. O'Neill is seated.)

22 THE COURT: Mr. Paradiso, your sentence --

23 please stand.

24 (Mr. Paradiso stands.)

25 THE COURT: Your sentence of a year and a day

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1 is a downward departure, although, if necessary, I would
2 have exercised my discretion under Booker to impose the
3 same sentence. The guidelines for you are 24 to 30
4 months. The guideline range was driven by the amount of
5 the loss involved, almost \$2 million has been attributed
6 to you. However, as the First Circuit described in
7 Shattuck, 961 F. 2nd 1012 at 1016 to 1017, and Gregorio,
8 956 F. 2nd 341 at 346, Section 2(f)(1.1)(b)(1) of the
9 guidelines presumes that the defendant alone is
10 responsible for the entire amount of the loss. The
11 Application 8 note of the November 19th, 1998 guidelines
12 that apply in this case states that: "In some cases the
13 amount of the loss may significantly overstate the
14 seriousness of the defendant's conduct. Where this
15 occurs, a downward departure may be warranted."

16 Shattuck and Gregorio referred to this note.
17 This is an encouraged departure, in the
18 appropriate case, and I find that this is such a case.
19 I find that Mr. Paradiso is a person of limited
20 education and intelligence, he comes from a religious
21 family, he has no criminal history. Mr. Maggio
22 approached him when he was out of work and injured.
23 Mr. Maggio proposed borrowing Mr. Paradiso's credit in
24 return for payment to Mr. Paradiso of \$100 per truck
25 purchased and ultimately part of what was supposed to be

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1 a successful business. There's no way that Mr. Paradiso
2 would have committed a crime at all and certainly no way
3 he would have been able to defraud anyone of large
4 amounts of money if he hadn't been influenced by
5 Mr. Maggio, and this alone justifies a reasonable
6 downward departure.

7 If a variance is necessary, I would say that
8 Mr. Deveau's sentence would further justify a reduction
9 for Mr. Paradiso and Mr. Sacco. It would also justify a
10 variance for Mr. Havey, if that were feasible, which
11 it's not, for reasons I'll describe.

12 I fully recognize that the aim of the guidelines

13 is to diminish unwarranted national disparity. However,
14 in *Thurston*, 456 F. 3d 211 at 219, 220, earlier this
15 year the First Circuit recognized that a wide divergence
16 between the sentence imposed on co-defendants could
17 injure the public's respect for the law and therefore
18 justify a reasonable variance from a guideline
19 sentence. Um, respect for the law is one of the Section
20 3553(a) factors.

21 In this case, Mr. Deveau was, with Maggio, one of
22 the masterminds of the scheme. His company got \$11
23 million worth of business and Mr. Deveau undoubtedly
24 richly profited from that. He cooperated only after he
25 knew that his scheme was discovered by CIT. The

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1 government agreed that he could be removed from this
2 case, pursuant to Rule 20, and have his case transferred
3 to New York.

4 He was immunized. The government made a motion
5 based on his substantial assistance. The government did
6 not advocate, as aggressively as it advocated for most
7 of the defendants in this case, that the scheme Deveau
8 was in involved sophisticated means, so he started with
9 guidelines that were improperly calculated too low in my

10 view and he got a year and a day, which is actually less
11 time served than a year, because if he behaved, he would
12 get 15 percent off for good time. So he would serve
13 about 10-plus months.

14 I find it would be utterly unjust for a virtual
15 dupe like Mr. Paradiso, who, without a lawyer,
16 cooperated immediately, but he could not get a
17 substantial assistance motion because he couldn't
18 assist, he didn't know anything of value to the
19 government, to get twice as long a sentence, twice as
20 much time as Mr. Deveau got.

21 I note that Mr. Paradiso profited from this scheme
22 somewhat. He got paid something and his credit cards
23 were paid off. So he got about \$37,000 worth of benefit
24 from this scheme. I don't find that it's been proven
25 that he did a lot of legitimate work for Mr. Maggio and

1 he did recruit others, although I found he wasn't a
2 supervisor or organizer, and he signed more than the
3 routine documents. So some time in prison is necessary
4 to recognize the seriousness of the offense and to deter
5 other people. And I find that, in your case, one year
6 and one day is the most appropriate sentence.

7 You may be seated.

8 (Mr. Paradiso is seated.)

9 THE COURT: Mr. Sacco, please stand.

10 (Mr. Sacco stands.)

11 THE COURT: Mr. Sacco has been sentenced only
12 to probation. I've departed, with regard to Mr. Sacco,
13 primarily because the amount of the loss significantly
14 overstates the seriousness of his conduct, something
15 that's an encouraged departure in proper cases. I would
16 also vary, if necessary, with regard to Mr. Sacco. The
17 contrast between Mr. Sacco and Mr. Deveau is even more
18 stark than the contrast between Mr. Paradiso and
19 Mr. Deveau.

20 The record indicates that at the time Mr. Paradiso
21 recruited him, Mr. Sacco was -- his mother, with whom he
22 was very close, was in a coma. Mr. Maggio told him that
23 -- if Mr. Sacco, in effect, lent him Mr. Sacco's credit,
24 Mr. Sacco would get a percentage of a legitimate
25 business. Mr. Sacco saw that business was being done.

1 So working for Mr. Maggio provided flexible hours and
2 permitted Mr. Sacco to be more attentive to his mother
3 and Mr. Sacco really did work full time in Mr. Maggio's

4 businesses. He was recruited at a time when he was very
5 vulnerable. I find there's no way Mr. Sacco would have
6 committed a crime, let alone defrauded anyone of
7 hundreds of thousands of dollars, without Mr. Maggio.

8 I've had occasion to watch Mr. Sacco over -- now
9 of four days. I find that he's genuinely and
10 extraordinarily contrite. He seems to have been moving
11 between crying and praying through most of these
12 proceedings. He could barely speak when it came time to
13 -- when it came his time to speak on Friday. Mr. Sacco,
14 when confronted, cooperated immediately without a
15 lawyer. He wasn't advised to do so like Mr. Deveau. It
16 wasn't a calculated decision to try to influence his
17 sentence. It would greatly injure the respect to the
18 administration of justice, I find, if he served longer
19 than Mr. Deveau and I find that no time is necessary to
20 deter him or to rehabilitate him.

21 This case has been hanging over Mr. Sacco and his
22 co-defendants for five or six years. Mr. Sacco, I view,
23 is almost an unwitting participant in this offense. I'm
24 not suggesting there wasn't a proper basis for his
25 guilty plea, but I do have the sense that if this case

1 went to trial, he would have had a real shot of being
2 acquitted. I, as I've said to the others, do find white
3 collar crime generally, and this crime particularly, to
4 be a very serious offense and usually that influences me
5 to go to the jail end, if there's a reasonable range for
6 sentences, but those interests of the seriousness of the
7 offense and in deterring others do not outweigh the
8 factors in favor of a probationary sentence for
9 Mr. Sacco.

10 And I then I considered, "Well, maybe I ought to
11 make part of that probationary period home confinement,
12 maybe it would look better to somebody," but it's just
13 not necessary or appropriate with regard to Mr. Sacco.
14 So he's going to have to pay the restitution, or try to,
15 and he's going to have this hanging over him. So those
16 are the reasons for the sentence with regard to
17 Mr. Sacco.

18 You may be seated.

19 (Mr. Sacco is seated.)

20 THE COURT: Mr. Havey.

21 (Mr. Havey stands.)

22 THE COURT: The factors that influenced me to
23 reduce Mr. Paradiso's sentence and Mr. Sacco's sentence,

24 to some extent, also exist in your case. That you were
25 dragged into something that -- from a Jiffy Lube, that

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1 was way over your head and something that you never
2 could have got involved in on your own. And I would
3 have imposed a shorter sentence, if it's feasible, but
4 you now have already served virtually a 15 month
5 sentence, and you did that because you weren't able to
6 obey the conditions of your pretrial release because
7 you've got a drug addiction.

8 And part of the reason I'm not just giving you a
9 sentence of time served, but making you serve another
10 couple weeks is to give the Probation Department a
11 chance to arrange a program for you, when you get out,
12 because I don't want to see you again. There should be
13 consideration given to whether Mr. Havey is a candidate
14 for our drug court. Maybe it's not necessary, but maybe
15 it is. But, you know, whether it was a drug problem
16 that caused you to be greedy or whether you were just
17 dumb like some of your co-defendants, this may turn out
18 to have actually been a good opportunity for you. I
19 know those drug habits are very hard for anybody to beat
20 on his own.

21 And you're going to get out in a couple of weeks
22 and you're going to be at a cross-roads. You talked to
23 me, I think, very sincerely on Friday about how much
24 you, you know, miss your children. You really have
25 something to go back to, but if you don't beat this drug

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1 problem, you're not going to just lose your liberty,
2 you're going to lose your family.

3 When you get out, you won't be on your own. The
4 Probation Department will be there to provide a partner
5 for you. You're a good partner. If you really work at
6 it, it's going to give you your best chance not to be
7 back in front of me, which is someplace you don't want
8 to be again. All right.

9 Now -- you may be seated.

10 (Mr. Havey is seated.)

11 THE COURT: Mr. Howe, Mr. O'Neill,
12 Mr. Paradiso are going to be incarcerated. Mr. Maggio
13 already is. Unless the government has a compelling
14 objection, if I'm requested, I'll give them until
15 January 8th at 12:00 noon to self report.

16 MR. WILD: No objection.

17 MR. WEINSTEIN: I have such a request for

18 Mr. Howe.

19 THE COURT: It's granted. Mr. Oteri, do you
20 make the same request?

21 MR. OTERI: I do, your Honor.

22 THE COURT: Mr. Lopez?

23 MR. LOPEZ: Yes, your Honor.

24 THE COURT: January 8th at 12:00 noon. The
25 defendants who are released will have their release

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1 continue on the same conditions. More specifically,
2 that's Mr. Paradiso, Mr. Howe and Mr. O'Neill.

3 Now, is there anything else in this matter for
4 today?

5 MR. OTERI: Your Honor -- oh, I'm sorry.

6 MR. MERBERG: If I may, your Honor, there are
7 three matters for Mr. Maggio. The first is, he did
8 finish his sentence imposed by Judge Zobel in early
9 October. I'm assuming that his sentence is not going to
10 be nunc pro tunc, it would be at least from the day he
11 would have been released from his last sentence.

12 THE COURT: That's my understanding. I think
13 the Bureau of Prisons in the first instance has to make
14 that calculation. But if they don't give Mr. Maggio

15 credit for the time he's been serving since the
16 expiration of Judge Zobel's sentence, you could come
17 back to me.

18 MR. MERBERG: And just for the record, he
19 lost, of course, his opportunity to have some -- either
20 home confinement or some other component at the end of
21 his last sentence, because of this case. I understand
22 that doesn't necessarily make any difference today.

23 The second thing is I'd ask the Court to
24 recommend, as Judge Zobel did, that he participate in
25 the 500 hour drug program. It was recommended by Judge

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1 Zobel. He was taken to the Buttner Medical Facility
2 because he was having seizures and he was never able to
3 take that program. And, in essence, now it has
4 expired.

5 And lastly, and as part of the same request, I
6 would ask the Court to recommend that he be returned to
7 the medical facility at Buttner, because he was being
8 treated there for being bipolar and he was being treated
9 there for his seizures.

10 THE COURT: Um, let's see. Judge Zobel
11 recommended the 500 hour drug treatment?

12 MR. MERBERG: She did, your Honor.

13 PROBATION OFFICER: Yes, your Honor.

14 THE COURT: All right. Well, I will join in

15 that or reiterate the 500 hour drug treatment and

16 treatment for the bipolar disorder. Whether that

17 requires Buttner or it could be properly addressed

18 someplace else, I've leave to the Bureau of Prisons.

19 MR. MERBERG: I would ask the Court just to

20 note as a recommendation that the Court would be willing

21 that he be returned to Buttner. He was in a treatment

22 program there.

23 THE COURT: He was brought here from a

24 treatment program at Buttner?

25 MR. MERBERG: That's correct.

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1 THE COURT: All right. I'll recommend his

2 return to Buttner. I will also say that you ought to

3 talk to the Bureau of Prisons yourself, because my

4 colleagues and I have noted that the Bureau of Prisons

5 has been increasingly unresponsive to our

6 recommendations. It's something we intend to address on

7 an institutional basis. But I don't think you can rely

8 on our recommendations being followed.

9 MR. MERBERG: And the last matter is the one
10 that your Honor had mentioned at the beginning of the
11 sentencing hearing as it related to a detainer that was
12 pending in the first case that --

13 THE COURT: Yeah, I'm going to ask -- I don't
14 even know what that detainer is. I've got 8 feet worth
15 of papers. The Probation Department should either move
16 by December 1st for me to act on that violation of
17 supervised release or, in consultation with the
18 government, ask me to withdraw it. Because frankly --
19 and now it's 6, 7 years later, I think. I've sentenced
20 the defendant. I doubt I would give him any additional
21 time.

22 MR. WILD: May I have a moment with Probation,
23 your Honor?

24 THE COURT: Sure.

25 (Pause.)

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1 MR. WILD: Thank you, your Honor.

2 THE COURT: Okay. If that's a loose end, that
3 will get resolved in the next couple of weeks.

4 MR. WILD: Your Honor, for the benefit of all,
5 the government's position on that would be, as the Court

6 would expect, I think, that if Probation is willing to
7 withdraw that petition, the government has no objection.

8 THE COURT: Thank you.

9 MR. MERBERG: Can that be done today on the
10 record unless Probation has an objection?

11 THE COURT: No, because I think it was
12 Mr. Buckley's colleague who was encouraging me to act on
13 it, so I think he should go back and have an opportunity
14 to consult everybody in his office who ought to be
15 consulted, so they can develop and consider an
16 institutional response.

17 MR. MERBERG: Thank you, your Honor.

18 MR. WEINSTEIN: With respect to Mr. Howe, your
19 Honor, I would ask that you receive from us, not later
20 than December 1st, a request for a judicial
21 recommendation for designation to the Bureau of
22 Prisons. It's something that's difficult to explore in
23 the degree of precision that I would otherwise have
24 preferred, and so the final judgment is not entered
25 until then. I know that it is an increasing challenge

1 for judges in this District, and perhaps elsewhere, to
2 have their recommendations followed, but we would just

3 like to have them -- and I'll make that in a writing not
4 later than a week from Friday.

5 THE COURT: Okay. As I think you've heard me
6 say before, in contrast to some of my colleagues, it's
7 my general policy not to make a recommendation because
8 it's my understanding that the Bureau of Prisons' own
9 policies provide that defendants will be incarcerated at
10 the facility with the proper security designation,
11 security level that's nearest to their home. But I will
12 give you until December 1 to make that filing. A copy
13 should be filed with the government and Probation, if
14 you make a request.

15 MR. OTERI: Your Honor, the same request on
16 behalf of my client, Mr. O'Neill. If you would think of
17 either Fairington, New Jersey or Skyco, Pennsylvania,
18 both are within driving distance of his home.

19 THE COURT: Well, as I say, it's -- why don't
20 you put something in writing and I'll consider it.

21 MR. LOPEZ: Your Honor, may I have the same
22 amount of time?

23 THE COURT: Yes.

24 MR. LOPEZ: Thank you.

25 MR. WILD: I'll advise the Court that the

1 Government will have no objection to the designation by
2 the defendants. That's frankly not a concern of the
3 government.

4 THE COURT: Okay. All right.

5 MR. WEINSTEIN: I'm assuming, Judge, that that
6 will be an electronic filing with a specific copy to
7 Probation?

8 THE COURT: Yes. All right.

9 Is there anything further in this matter for
10 today?

11 MR. WILD: No, your Honor.

12 THE COURT: All right. This is -- I'm sorry.
13 This has taken a long time because it's been important
14 to everybody involved, it's been challenging, the
15 adversary system has worked very effectively here from
16 my perspective. The counselors should be commended for
17 that.

18 The Court is in recess.

19 (Ends, 4:10 p.m.)

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1 C E R T I F I C A T E

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5 I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER,

6 do hereby certify that the foregoing record is a true

7 and accurate transcription of my stenographic notes,

8 before Chief Judge Mark L. Wolf, on Monday, November 20,

9 2006, to the best of my skill and ability.

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RICHARD H. ROMANOW

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